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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,766	01/02/2002	Jeffery Tabor	659-919	6310
757	7590	07/24/2007	EXAMINER	
BRINKS HOFER GILSON & LIONE			SELLS, JAMES D	
P.O. BOX 10395			ART UNIT	PAPER NUMBER
CHICAGO, IL 60610			1734	
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			07/24/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/038,766	TABOR ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	James Sells	1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 March 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2,3,6-8,17-21 and 24-33 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 17-21 and 27-32 is/are allowed.
- 6) Claim(s) 2,3,6-8 and 24-26 is/are rejected.
- 7) Claim(s) 33 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-3, 6, 24-26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emenaker et al. (US Patent 5,830,296) in view of Chavannes (UK 942,214) and Riddell (US Patent 6,319,342).

Regarding Claim 3, Emenaker et al. teach transfer assembly '50 including carrier bodies 52 and 54. Bodies 52 and 54 each have an outer surface including the outer surface of the rolls themselves, surface 60A of body 52, and the surface of layer 76. The outer surfaces include a convex top portion (Fig 3) and convex recessed portions 58 and 68. Portions 58 and 68 have fixed, non-changeable shape (Fig 3). Bodies 52 and 54 each include at least one aperture (c 3, L 65, to c 5, L 36). A web is feed between bodies 52 and 54 during operation forming seal 40, which is where a final product 20 is cut from the web, and embossings 34. Bodies 52 and 54 are configured to engage discrete part 20 such that the outer surfaces have discrete-part-engaging-surfaces. The top portions at 62 and 56 are adapted and configured to engage a portion of part 20 having a first thickness (i.e., initial web surface), and portions 58 and 68 are adapted and configured to engage at least one portion of part 20 having at least one thickness greater than the first thickness (i.e., the center the remaining portion of part 20

under the initial surface [see Fig 2] at edges 28 where seam 40 is formed and part 20 is removed from the remaining web) (c 5, L 37-56).

Emenaker et al. do not teach at least one aperture in the outer surface of either of bodies 52 and 54 and extending through the respective body for communication with a vacuum source.

However, embossing rollers conventionally include a vacuum source in communication with the roller (i.e., carrier bodies) having apertures all along in the outer surface thereof to help keep the web fed therethrough aligned during the embossing operation. See Chavannes. Chavannes teaches embossing roller 15 including vacuum source 72 in communication with the depressed area of roller 15 via openings 71 such that film 11 is retained in position during embossing (pg 5, L 30-64).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Emenaker et al. at least one aperture in the outer surface of either of bodies 52 and 54 and extending through the respective body for communication with a vacuum source because embossing rollers conventionally include a vacuum source in communication with the roller having apertures all along in the outer surface thereof to help keep the web fed therethrough aligned during the embossing operation as demonstrated by Chavannes.

Regarding Claim 3, Riddell teaches sanitary napkins of various shapes where the shapes of portions 58 and 68 of Emenaker et al. cut and seal to form the final shape of sanitary napkins (c 1, L 60-64). Riddell teaches at column 13 that the shapes can be hourglass, rectangular, oval, or racetrack. It would have been obvious to one having

ordinary skill in the art to employ such an hourglass shape, as taught by Riddell, in the transfer assembly of Emenaker based on the desirability of such a shape and configuration. Applicant is reminded that a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Emenaker et al. that the shapes of portions 58 and 68 be an hour glass shape instead of being outboard on the sides because Riddell teaches the hour glass shape to be a conventional shape for a sanitary napkin and it is obvious to replace one shape with another art recognized alternative shape in the same art.

The limitation of claims 24-25 are met by Emenaker et al. in view Chavannes and Riddell as described above for claim 3 since at least one aperture is formed in the top portions of the outer surface of portions 58 and 68.

Claim 3, the limitation of "for transporting and applying a discrete part to a moving web" refers to the intended use of the claimed transfer assembly. Assembly 50 is capable of transporting part 20 from the nip via the exit nip where part 20 could be deposited onto a moving web thereto. The limitation of "the discrete part having varying thickness" refers to the material operated upon by the claimed transfer assembly and does not provide a structural difference between claim 3 and the transfer assembly of Emenaker et al.

Regarding Claim 2, portions 58 and 68 are located generally centrally in the outer surfaces.

Regarding Claim 6, in Emenaker et al. bodies 52 and 54 are supported in some manner for rotation to occur such that the items for support are considered the carrier base.

Regarding Claim 26, in Emenaker et al. the top portions and portions 58 and 68 are integrally formed as a single unitary component.

Regarding claim 33, in Emenaker et al, Fig. 3 shows carrier bodies 52 and 54 which are rotatable about an axis substantially normal to a bottom surface of the recessed portion in the manner claimed by the applicant.

3. Claims 7-8 are rejected under 35 USC 103(a) as being unpatentable over Emenaker et al. in view of Chavannes and Riddell as applied to claims 2-3, 6, and 24-26 above, and further in view of Boothe et al. (US Patent 5,716,478).

Regarding Claims 7-8, Emenaker et al. teach providing bodies 52 and 54 in a manner such that the web does not stick thereto during operation. However, Emenaker et al. is silent as to the surface roughness of the outer surfaces, i.e., a surface roughness of at least 3 micrometers (claim 7) and that such are plasma coated (claim 8).

Boothe teaches a transfer roll, where bodies 52 and 54 of Emenaker et al. are transfer rollers in that such move a web there between, including outer surface 46 having a surface roughness of at least 10 micrometers (which overlaps the claimed

range) made by a plasma coating. This is provided to assist in gripping web 26 (c 6, L 15-45).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Emenaker et al. that bodies 52 and 54 have a surface roughness of at least 10 micrometers (claim 7, overlaps claimed range) made by and that such are plasma coating (claim 8) because Boothe teaches that such a surface roughness helps to maintain a web in position on a roller by grip assistance where such in Emenaker et al. would help to maintain the web in position during operation by grip assistance.

### ***Allowable Subject Matter***

4. Claims 17-20, 21, and 27-32 are allowed.
  
5. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
  
6. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 17: Emenaker et al. teach an apparatus including a means adapted to support the web though Emenaker et al. do not teach this means to include a conveyor which advances the web; however, such are conventional in the art of

moving a web to a cutter roll. Emenaker et al. teach the transfer assembly discussed in paragraphs 2 and 3 above. Emenaker et al. do not teach a drive member which is configured to rotate about a second axis which is offset from a first axis of the transfer assembly (i.e., the axis of rotation of bodies 52 and 54); at least one coupler arm which is pivotally connected to the drive member about a pivot point with the arm including a cam end which is configured to follow a curvilinear path and a crank end which is slidably connected to the transfer assembly; and a drive mechanism adapted to rotate the drive member about the second axis wherein as the drive member is rotated the cam end of the arm is guided along the curvilinear path and the crank end of the arm slidably engages the transfer assembly thereby pivoting the arm about the pivot point to vary effective drive radius of the transfer assembly and rotate the transfer assembly at a variable speed. It is granted that Boothe et al. teach these limitations; however, it would not have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Emenaker et al. the above limitations because Boothe et al. actively transfer the parts provided by the above limitations where Emenaker et al. passively delivers parts 20 from the nip between bodies 52 and 54.

Regarding claim 21: Emenaker et al. teach the transfer assembly discussed in paragraph 4 but do not teach that bodies 52 and 54 rotate about an axis substantially normal to the bottom surface of portions 58 and 68 and it would not have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided for such in Emenaker et al. modified in that Emenaker et al. teach bodies 52 and 54 to rotate about the first axis parallel to the bottom surface of portions 58 and 68.

### **Response to Arguments**

7. Applicant's arguments filed March 9, 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references of Emenaker and Chavannes, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as stated above, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Emenaker et al. at least one aperture in the outer surface of either of bodies 52 and 54 and extending through the respective body for communication with a vacuum source because embossing rollers conventionally include a vacuum source in communication with the roller having apertures all along in the outer surface thereof to help keep the web fed therethrough aligned during the embossing operation as demonstrated by Chavannes. Therefore applicant's argument is believed to be incorrect in this instance.

In response to applicant's argument that Emenaker teaches away from the incorporation of a vacuum source such as disclosed by Chavannes, the test for obviousness is not whether the features of a secondary reference may be bodily

incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

***Telephone/Fax***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sells whose telephone number is 571-272-1237. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



JAMES SELLS  
PRIMARY EXAMINER  
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